S.B.CIVIL WRIT PETITION NO. 2838/2006

(State of Rajasthan Vs. Jan Jagriti Vikas Manch & others)

DATE OF ORDER :: 02.06.2006

HON'BLE MR.JUSTICE DINESH MAHESHWARI, J.

Mr.H.R.Soni, Addl. Government Advocate

Having heard learned Addl. Government Advocate at length and having perused the material placed on record, this Court is satisfied that this writ petition remains absolutely bereft of substance and deserves to be dismissed.

The petitioner seeks to challenge by way of this writ petition the order dated 03.09.2005 passed by the Addl. Civil Judge (Sr.Division), Pali rejecting a so-called review application in relation to the judgment and decree dated 13.11.2003.

By way of the judgment and decree dated 13.11.2003 in Civil Suit No.17/2000, in which the petitioner-State of Rajasthan was a party defendant No.3, the learned trial court directed construction of an over bridge within 3 kms. from the Railway Station in the City of Pali; and it was directed that the petitioner-State of Rajasthan shall bear expenses thereto and the defendant No.4 Municipal Council shall provide land and all the formalities required shall immediately be completed by the defendants. The petitioner-defendant-State of Rajasthan

was also given liberty to recover the construction costs by way of toll or by way of any other tax. The defendants were further directed to start the construction work within three months and complete the same within two years and submit a report to the Court. The operative portion in the judgment and decree dated 13.11.2003 reads thus,-

> "अत: वाद वादी विरूद्ध प्रतिवादीगण स्वीकार किया जाकर आदेश दिया जाता है कि पाली में रेल्वे स्टेशन के दोनों तरफ स्थित रेल्वे लाईन पर रेल्वे स्टेशन से 3 किलोमीटर से अनाधिक दूरी पर सभी प्रतिवादीगण परस्पर समंवय एवं विचार विमर्श कर विशेषज्ञों की सर्वोतम राय के मुताबिक ओवर ब्रिज का निर्माण करें। तथा स्थान का निर्धारण करते समय वादी से भी राय मशविरा *(अपठित)* । इस ओवर ब्रिज का निर्माण का समस्त खर्च प्रतिवादी संख्या 3 राज्य सरकार वहन करेगी। प्रतिवादी सं. 1 व 2 इस सम्बन्ध में वे समस्त तकनीकी व महत्वपूर्ण सुविधाएँ तथा संसाधन प्रदान करेंगे जो इस ओवर ब्रिज के निर्माण के लिये आवश्यक हो । प्रतिवादी संख्याँ 4 नगर परिषद इस सम्बन्ध में आवश्यक भूमि उपलब्ध कराने हेतु समस्त सुविधाएँ प्रदान करेगी। इसमें किसी प्रकार की औपचारिक स्वीकृति या प्रस्ताव आदि की आवश्यकता हो तो वे सभी स्वीकृतियाँ व प्रस्ताव आदि की औपचारिकताएँ प्रतिवादीगण तुरन्त पूरी करेंगे । प्रतिवादी संख्या 3 (राजस्थान राज्य सरकार) इस ओवर ब्रिज के निर्माण में आने वाले व्यय को इस ओवर ब्रिज का इस्तेमाल करने वाले वाहनों से टोलटेक्स या इसी प्रकार के किसी टैक्स से वसूल करने के लिये स्वतंत्र रहेंगे। प्रतिवादीगण इस ओवरब्रिज का निर्माण तीन माह की अवधि में हर सूरत में प्रारम्भ कर दे और दो साल की अधिकतम अविध में निर्माण पूर्ण कर रिपोर्ट इस न्यायालय में प्रस्तुत करें । तदनुसार डिक्री पर्चा तैयार हो।"

It appears that a modification was made in the aforesaid decree on 20.10.2004 by the appellate court i.e. District Judge, Pali in Civil Appeal (Decree) No.13/2004 to which also the present petitioner-State of Rajasthan was a party. The decree passed by the trial court was maintained with the consent of all the parties with partial modification that the defendants shall take up construction of the over bridge within six months from 20.10.2004. The order passed by the appellate court reads thus,-

> "अत: समस्त पक्षों की सहमति से उपरोक्त अनुसार प्रश्नगत डिक्री आंशिक रूप से संशोधित की जाती है तथा आदेश दिया जाता है कि प्रतिवादीगण प्रश्नगत प्रस्तावित ओवरब्रिज का निर्माण आज से 6 माह के भीतर प्रारंभ कर दें तथा निर्माण प्रारंभ करने के पश्चात् दो साल की अवधि में निर्माण पूर्ण कर अन्वीक्षा न्यायालय में रिपोर्ट प्रस्तुत करे। शेष डिक्री यथावत रखी जाती है। पक्षकारान खर्चा अपना अपना वहन करेंगे । उपरोक्तानुसार डिक्री पर्चा मुर्तिब किया जाए।"

It appears that a so-called review application was thereafter filed by the present petitioner-State of Rajasthan before the trial court. Though a copy of review application has not been placed on record, it appears from the observations of the learned trial court that the so-called review application was submitted with reference to certain subsequent events after passing of the decree and it was sought to be suggested that the decree could not be put to execution. The learned trial

court has observed that the matters referred in the review application had also been considered in the impugned judgment and rejected the review application as incompetent. Hence this writ petition.

This Court is clearly of opinion that the observations made by the learned trial court and the decision arrived at remain justified and unexceptionable.

It is apparent on the face of record that the decree dated 13.11.2003 has not only become final but has even merged into the modified decree of the appellate court. Its partial modification, only in relation to enlargement of time period, was brought about by the appellate court on 20.10.2004 with the consent of all the parties that necessarily includes the present petitioner. Seeking of review thereafter before the trial court was wholly unjustified and rather ill-conceived.

It is not borne out from the material placed on record as to which aspect of the matter was sought to be put into contention by way of review application nor in the present writ petition any such ground has been spelt out which could show that there was any error apparent on the face of the record calling for review or there was a case of discovery of any such material evidence which was not in the knowledge of the petitioner at the time when the decree was passed.

The learned trial court has commented that review application seeks to refer either to the matters which have already been dilated upon in the impugned judgment or relates to certain so-called subsequent events after passing of the decree. On such matters, the learned trial court has rightly observed that the review application was not competent.

The learned trial court had rightly rejected such an incompetent and baseless application and the order passed by the learned trial court dated 03.09.2005 does not suffer from any error nor could be said to be leading to manifest failure of justice. There does not appear to be any ground to interfere with the impugned order under Article 227 of the Constitution of India.

The writ petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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